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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,810	09/18/2003	Christopher J. Asenbauer	HOP-03019	8749
7590	07/01/2004		EXAMINER	
Christopher J. Asenbauer 1002 Maple Avenue Beaumont, CA 92223			COTTINGHAM, JOHN R	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/666,810	ASENBAUER, CHRISTOPHER J.
	<b>Examiner</b>	<b>Art Unit</b>
	John R. Cottingham	3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-27 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8,10-13,21-24 and 27 is/are rejected.  
 7) Claim(s) 9,14-20,25 and 26 is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date 9/18/03.

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8, 10-12, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Fish U.S. Patent 4,380,327. Fish shows all of the claimed subject matter of a safety fence system in Figures 1-6.

Regarding claim 1, a safety fencing system comprising: a plurality of substantially longitudinal poles 12 including a first part 12 and a second part 16; a pliable fencing material 14 received between said poles; a plurality of inserts 22 adapted to receive one end of each of said poles; and a plurality of fasteners 18 adapted to secure said first part to said second part while capturing said fencing material there between.

Regarding claim 2, wherein said first part and said second part of said substantially longitudinal poles include a flat edge and a curved edge, thus providing a substantially "D" shape. (Half 16 has a flat edge and a curved edge on the opposite side, and half 12 has a curved edge, and a flat edge where the holes are drilled)

Regarding claim 3, wherein said curved edge includes a relief track provided near the midpoint of said curved edge. (the edge where both halves meet, meets this limitation)

Regarding claim 4, wherein said first part and said second part 12 and 16 further include a substantially convex portion on a surface of said first part and a substantially concave portion on a surface of said second part.

Regarding claim 5, wherein said substantially convex portion and said substantially concave portion are provided on said flat edge. (the hole edges on the parts 12 and 16)

Regarding claim 6, wherein said pliable fencing material 14 is comprised of a mesh material with a reinforced material border 20b on an upper edge and a lower edge.

Regarding claim 7, wherein said inserts 22 include a closed end and a flange on an opposite end with a substantially cylindrical portion there between.

Regarding claim 8, wherein said substantially cylindrical portion includes a ridge (upper end) provided on an exterior thereof.

Regarding claim 10, wherein said inserts 22 further include a mounting hole (upper hole holding part 12) provided substantially orthogonal to a long axis of said insert.

Regarding claim 11, wherein said fasteners are machine screws 18.

Regarding claim 12, wherein machine screws 18 are self tapping machine screws.

Regarding claim 27, a method of restricting access to a controlled area such as a swimming pool including the steps of: providing a safety fence including: a plurality of substantially longitudinal poles 12 including a first part 12 and a second part 16 a pliable

fencing material 14; a plurality of inserts 22 adapted to receive one end of each of said poles; and a plurality of fasteners 18 adapted to secure said first part to said second part while capturing said fencing material there between; drilling a plurality of holes (inherent) around said controlled area; assembling said longitudinal poles in said inserts and placing said inserts with said poles into said holes; providing said pliable fencing material 14 around said controlled area and between said first part and said second part of each of said poles; fastening said first part and said second part of said poles together with said fasteners 18, thereby capturing said pliable material there between.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fish in view of Siegler et al. U.S. Patent 6,375,164. Fish does not show a plurality of cup shaped caps each with an open end adapted to receive a second end of one of the longitudinal poles. However, Siegler et al. teaches, in Figs. 6-14, the use of a cap 54 to prevent items from inside the post. It would have been well within the level of one of ordinary skill in the art at the time the invention was made to use a cap, as taught by Siegler et al., to keep items out of the poles of Fish.

5. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fish in view of Sadlinsky et al. U.S. Patent 5,664,769. Fish does not disclose a gate

section. However, Sadinsky et al. shows a gate G2, in Figures 1-12, with first and second frame members 31 and 33, with a gate stop 53 and gate ear (holes in B7) to allow passage through the fence. It would have been well within the level of one of ordinary skill in the art at the time the invention was made to use a gate, as taught by Sadlinsky et al., to allow passage through the Fish fence.

***Allowable Subject Matter***

6. Claims 9, 14-20, and 25-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

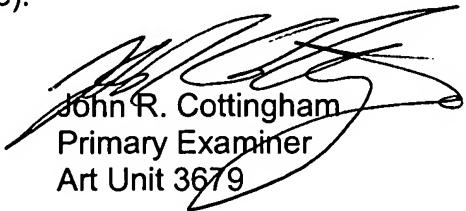
***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. O'Fearna shows a similar invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Cottingham whose telephone number is (703) 306-3439. The examiner can normally be reached on Monday - Thursday, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John R. Cottingham  
Primary Examiner  
Art Unit 3679

jrc